

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	
)	
v.)	1-18-cr-371-3
)	1:18-cr-371-4
WILLIAM ANTHONY WARD and)	
BRITTANY LEIGHANN PHIPPS,)	
)	
Defendants.)	

ORDER

Defendants William Anthony Ward and Brittany Leighann Phipps filed motions to suppress, contending that their Fourth Amendment rights were violated when law enforcement officers stopped a vehicle which Mr. Ward was driving and in which Ms. Phipps was a back-seat passenger. *See* Docs. 43, 44. During the stop, the officers searched the vehicle and discovered weapons and methamphetamine. The sole dispute is over the legality of the initial stop of the vehicle and, specifically, whether officers had a reasonable, articulable suspicion of criminal activity.

Based on the findings of fact made in open court on Wednesday, January 9, 2019, as supplemented herein, the Court finds and concludes that:

1. The Stokes County Sheriff's Department had a reasonable suspicion that the front seat passenger in the vehicle, Robert Merritt, had committed, was committing, or was about to commit the criminal offense of possession of a firearm by a felon.

a. Mr. Merritt arrived at a suspected drug location in a truck with Mr. Ward and Ms. Phipps. The location consisted of a mobile home and two small

outbuildings. Detective Wade White from the Stokes County Sheriff's Department was nearby and observed the location from a parked vehicle. Detective White saw the driver of the truck, the defendant Mr. Ward, remove what appeared to be an assault rifle from the back seat on the driver's side. With no effort to conceal the gun, Mr. Ward took it into one of the outbuildings for about 15 minutes. Mr. Merritt and Ms. Phipps were also in the outbuilding with the gun during some or all of that time. Mr. Ward then returned the gun to the back seat on the driver's side, again making no effort to conceal it while he was moving it, before he, Mr. Merritt, and Ms. Phipps left the premises in the truck.

b. Detective White knew Mr. Merritt to be a convicted felon who was on probation at the time. He observed Mr. Merritt in close proximity to the assault rifle both in the outbuilding and in the passenger compartment of the truck. The vehicle was stopped soon thereafter.

c. It was reasonable for Detective White to suspect that a firearm the size of an assault rifle laying on the back seat would have been visible and accessible to an individual in the front passenger seat of the truck where Mr. Merritt was sitting. Mr. Ward made no attempt to hide the weapon from Mr. Merritt and took no action suggesting that others in the truck were not free to access or possess it. To the contrary, the three persons in the vehicle appeared to be acting together: they arrived together, they went into the same small building, and they left together.

d. In light of the totality of the circumstances, Detective White's suspicion that Mr. Merritt had constructive possession of the assault rifle on the back seat and could easily take actual possession of it while he was in the truck was reasonable.

2. As the Fourth Circuit made clear in *United States v. Perkins*, one of the purposes of an investigative or “*Terry*” stop can be “to grant officers the ability to prevent future wrongdoing,” not just ongoing crimes. 363 F.3d 317, 326–27 (4th Cir. 2004). In view of all the circumstances, officers were entitled to stop the vehicle to investigate whether there was, in fact, an assault rifle in the passenger compartment with a known felon and whether Mr. Merritt had constructive possession of, or easy access to, actual possession of the firearm.

3. *United States v. Black*, 707 F.3d 531 (4th Cir. 2013), does not require a different result. As the *Black* court held, carrying a firearm in an open-carry state such as North Carolina, without more, does not create reasonable suspicion; being a felon in possession is not the “default status” of persons possession firearms; *id.* at 540; and mere possession of a gun by one person does not provide reasonable suspicion to detain other persons standing near the person with the gun. *Id.* at 540–41. Here however, there is substantially more. In *Black*, the defendant was outside an apartment complex with several other people, not in a vehicle with the person carrying a firearm; the person with the firearm had it on his person; and the law enforcement officers did not have knowledge that any of the people in the group were convicted felons. Here, the firearm was an assault rifle being transported inside the passenger area of a vehicle occupied by a

known convicted felon and the felon had been in close proximity to the weapon for some time in both the vehicle and, earlier, a storage building.

4. To the extent Ms. Phipps contends that the officers had no reasonable suspicion that she was involved in criminal activity, that is not the test. To conduct a *Terry*-based stop of a vehicle, police need only possess a “reasonable suspicion that criminal activity may be afoot.” *Perkins*, 363 F.3d at 321 (citing, e.g., *Terry v. Ohio*, 392 U.S. 1, 30 (1968)). For the reasons noted above, officers had reasonable suspicion as to Mr. Merritt, and there is “no rule that prohibits law enforcement officers from stopping a vehicle because they do not have reasonable suspicions concerning every occupant of that vehicle.” *United States v. Martinez*, 808 F.2d 1050, 1054 (5th Cir. 1987).

For the foregoing reasons, it is **ORDERED** that the motions to suppress, Docs. 43 and 44, are **DENIED**.

This the 17th day of January, 2019.


UNITED STATES DISTRICT JUDGE